

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Order to Comply and
Child Labor Fine Assessment Issued to
Suess Construction

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED DECISION

The above matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Friday, November 12, 2004 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in the City of Minneapolis, MN. The OAH record closed on the date of the hearing.

Julie A. Leppink, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127 appeared representing the Department of Labor and Industry. Kris and Tom Suess appeared on behalf of Suess Construction, 28806 713th Lane, St. James, MN 56081, without the benefit of counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Rd., St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62,

subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

The issues in this proceeding are whether or not the Respondent employed an individual under 18 in its construction business, whether the minor was performing employment tasks which did not require him being in or entering the immediate area of the hazardous operation, and whether the \$6,000 penalty assessed by the Department was appropriate.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Kris and Tom Suess own and operate Suess Construction, a small construction firm located in St. James, Minnesota. The firm is primarily involved in the construction of residential and farm structures. In 2003 they employed between two to six employees depending upon the season. The annual gross income for the business in 2003 was between \$362,500 and \$500,000.^[1]

2. On May 30, 2003 the Respondent hired a 16 year old, T.B., to perform errands at construction sites. T.B. worked a total of six days for the Respondent.^[2]

3. At mid-morning on June 6, 2003, T.B. was unloading sheet metal from a truck which had transported the materials from a lumber yard to the work site, when he suffered a cut to his left index finger. Mr. Suess took T.B. to a clinic where he received three stitches on his finger.^[3]

4. The Respondent was building a storage shed at the work site. T.B. was not involved in the actual construction. His job was to help with materials and tools. The truck that T.B. was unloading was located more than 50 feet from the construction site.

5. The Respondent filed a First Report of Injury in connection with T.B.'s cut finger which was received by the Department on June 18, 2003.^[4] After reviewing the First Report of Injury, a labor investigator with the Department filed a complaint against the Respondent for employing a minor who was injured at a work site.^[5]

6. The Department filed a records request with the Respondent and the Respondent sent in the records requested to the Department.^[6]

7. On July 10, 2003 the Department issued an Order to Comply and Child Labor Penalty Assessment to the Respondent, for the illegal employment of minors, that assessed a fine of \$1,000 for employment of a minor under the age of 18 in a hazardous occupation, and a penalty of \$5,000 for employing a minor under the age of 18 who was injured in hazardous employment.^[7]

8. Neither Tom nor Kris Suess were aware that they could not employ a person under the age of 18 in their business. A licensing class that Kris and Tom Suess had attended had not made it clear that people under 18 cannot be employed in construction.^[8]

9. The Respondent filed an objection to the Department's Order and Assessment on July 17, 2003, arguing that the penalty was unduly harsh.^[9]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 181A.01-181A.12.

2. The Department of Labor and Industry has complied with all substantive and procedural requirements of law or rule and the Notice of Hearing in this matter was proper.

3. Minn. Stat. § 181A.04, subd. 5 provides that no minor under the age of 18 shall be permitted to work in any occupation which the Commissioner shall find to be particularly hazardous for the employment of children under 18 years of age or detrimental to their well-being.

4. Minn. Rule pt. 5200.0910 F. provides that no minor under the age of 18 shall be employed in or about construction or building projects.

5. That the Respondent is in the construction business.

6. Under Minn. Rule pt. 5200.0930, subp. 2 a minor who performs employment tasks which do not require being in or entering the immediate area of the hazardous operation is excluded from the prohibition of pt. 5200.0910.

7. Under Minn. Stat. § 181A.12, subd. 1 requires the Department to impose a fine for a violation of § 181A.04 in the amount of \$1,000 for employment of a minor under the age of 18 in a hazardous occupation and a fine of \$5,000 for employing a minor under the age of 18 who is injured in hazardous employment.

8. That the Respondent employed a minor under the age of 18 in a hazardous occupation.

9. That when T.B. was injured, he was performing employment tasks which did not require him to be in the immediate area of the hazardous operation.

10. That because the Respondent falls within the exception set forth above, the Department did not justify the imposition of the \$5,000 penalty related to the injury of a minor under the age of 18.

11. These conclusions are explained in the Memorandum which follows.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Commissioner of Labor and Industry assess a fine of \$1,000 against Suess Construction for its employment of a minor under the age of 18 in its construction business.

Dated this 30th day of November 2004.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Tape-Recorded

One Tape

No Transcript Prepared

MEMORANDUM

The Respondent did employ a person under 18, for six days, in its small construction business during the summer of 2003. The owners were unaware this was unlawful and their class leading to licensing did not clearly explain the requirement. The owners acknowledge the need to comply with the law and were completely cooperative with the Department. Nonetheless, the statute requires a mandatory fine of \$1,000, since the minor's job as a "gopher" for tools and materials more likely than not took him near the area of construction on occasion. The exemption of pt. 5200.0930, subp. 2. does not apply to that violation.

The minor suffered a minor injury – a cut to his finger requiring three stitches. The testimony disclosed that this injury occurred over 50 feet from the construction site as materials were being unloaded from a truck. The Department did not have this information prior to the hearing. Since the injury happened when the minor was performing a task outside of the immediate area of the hazardous operation, the

exemption of pt. 5200.0930, subp. 2 applies and the \$5,000 should not be imposed upon the Respondent.

G.A.B.

[\[1\]](#) Ex. 5.

[\[2\]](#) Ex. 7.

[\[3\]](#) Ex. 2.

[\[4\]](#) Ex. 2.

[\[5\]](#) Ex. 1.

[\[6\]](#) Ex. 4-7.

[\[7\]](#) Ex. 8.

[\[8\]](#) Ex. B.

[\[9\]](#) Ex. 12.